IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1653 of 2005
To
FIRST APPEAL No. 1664 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
HON'BLE MR.JUSTICE M.C.PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAYSHI NAGJI KOLI - Appellant(s)

Versus

KUTCH SALT AND ALLIED INDUSTRIES LIMITED & 1 - Defendant(s)

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Appearance :
MR BA VAISHNAV for Appellant No(s).: 1.
MS SHAILI A KAPADIA for Respondent No(s).: 1.
DELETED for Respondent No(s).: 2.
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CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE M.C.PATEL

Date : 14/07/2005

COMMON ORAL JUDGMENT (Per : HON'BLE MR.JUSTICE M.C.PATEL)

All these appeals filed by the original claimants

under Section 30 of the Workmen's Compensation Act, 1923 arise out of the common judgment and orders dated 14th October, 2004 passed by the Commissioner, Workmen's Compensation Act, Kutch in Compensation Case Nos. 63/99, 29/99, 30/99, 31/99, 32/99, 64/99, 65/99, 66/99, 67/99, 68/99, 75/99 and 76/99. The respondent no.1 is the principal employer and, the name of respondent no.2, who was the Contractor, has been deleted pursuant to the order dated 29th June, 2005. In all, there were 73 claim applications. They were filed by the claimants claiming to be the dependants of the workmen who had died in a cyclone on 9th June, 1998 while they were employed.

2. One of the contentions on behalf of the respondent was that the claimants were not dependants of the deceased workmen. The learned Commissioner held that the appellants in the present appeals, who were the claimants in the above-numbered compensation cases, were not dependants of deceased workmen and, hence, they were not entitled to compensation. He, therefore, dismissed the said compensation cases. The claimants have, therefore, filed these appeals challenging the decision of the learned Commissioner that they were not dependants.

3. These appeals came on for admission hearing on 29th June, 2005. On that day, we heard the learned counsel for the appellant and the learned counsel for respondent no.1, who appeared on caveat. It was contended on behalf of the learned counsel for the appellant that the Commissioner had recorded the finding without giving an opportunity to the claimants to lead evidence and satisfy the Commissioner that they were, in fact, dependants. The learned counsel for the respondent however, contended that, in fact, the Commissioner had given the finding on the basis of the material on record. However, it was suggested at that time that the matters may be remanded so as to give an opportunity to the appellants to prove before the Commissioner that they were, in fact, dependants. The learned counsel for the respondent prayed for time to take necessary instructions in the matter. At the same time, notice for final disposal was also issued and Ms. Shaili Kapadia waived service for respondent no.1 and the matters were allowed to stand over till today.

4. Today, learned counsel for the respondent agrees that the matters may be remanded. Hence, we admit the

appeals and proceed to dispose of the same today since Ms. Shaili A. Kapadia waives notice and is agreeable to the matters being remanded. However, she pointed out that in several cases, the same claimant claimed to be the dependant of more than one deceased workman and without prejudice to their contention that none of the appellants was a dependant of any deceased workman, the Commissioner, in any case, cannot hold any claimant to be a dependant of more than one workman. The learned counsel for the appellant also agrees that, in any case, none of them can be held to be a dependant of more than one deceased workman. In view of the above, all these appeals are allowed and the Compensation Case Nos. 63/99, 29/99, 30/99, 31/99, 32/99, 64/99, 65/99, 66/99, 67/99, 68/99, 75/99 and 76/99 are remanded to the Commissioner with a direction to decide afresh whether the claimants were dependants or not after giving an opportunity to the claimants to give evidence and establish their claim as dependants. It will also be open to the respondent to contend that none of the appellants is at all a dependant of any deceased workman and give evidence. It is clarified that, in any case, the Commissioner cannot hold a claimant to be a dependant of more than one deceased workman. The appeals are allowed to the aforesaid

extent. The Commissioner shall make every endeavour to dispose of the proceedings at the earliest, preferably within three months from the date of receipt of this order. R & P to be sent down immediately.

(B.J. Shethna, J.)

(M.C. Patel, J.)

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